

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

DOMINGO JACOBO CASTILLO,
Defendant.

No. CR-04-2157-FVS

ORDER DENYING
MODIFICATION OF SENTENCE

THIS MATTER comes before the Court without oral argument based upon Domingo Jacobo Castillo's motion to modify his sentence. He is representing himself.

BACKGROUND

On November 15, 2004, Domingo Jacobo Castillo was arraigned in CR-04-2157-FVS on a charge of possession of a firearm by a prohibited person. 18 U.S.C. § 922(g)(5). He was detained pending further proceedings. He was entitled to credit for the time he served in detention. 18 U.S.C. § 3585(b). *Cf. United States v. Wilson*, 503 U.S. 329, 334-35, 112 S.Ct. 1351, 117 L.Ed.2d 593 (1992) (the Attorney General, through the Bureau of Prisons, calculates credit in the first instance). Ultimately, Mr. Castillo pleaded guilty. On July 14, 2005, he was sentenced to a term of 46 months imprisonment. The 46-month prison term was to run concurrently with a 240-month prison term

1 that had been imposed in CR-04-2049-WFN on March 29, 2005. Mr.
2 Castillo appealed his conviction in CR-04-2157-FVS. The Ninth Circuit
3 affirmed in an unpublished memorandum decision. Mandate issued on
4 September 10, 2007. On June 3, 2013, Mr. Castillo filed a motion
5 seeking a reduction of his sentence pursuant to 18 U.S.C. § 3582(c).

6 **RULING**

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8 "In general, federal courts lack jurisdiction to 'modify a
9 term of imprisonment once it has been imposed.'" *United States*
10 *v. Austin*, 676 F.3d 924, 928 (9th Cir. 2012) (quoting 18 U.S.C. §
11 3582(c)). There are, however, three circumstances in which
12 modification is permitted: "(1) when the Bureau of Prisons moves
13 for a reduction based on a finding that special circumstances
14 warrant it, (2) when expressly permitted by statute or Federal
15 Rule of Criminal Procedure 35, or (3) when a defendant was
16 sentenced based on a sentencing range that is subsequently
17 lowered." *United States v. Bloomgren*, No. 12-8018, 2012 WL
18 3038570, at *1 (10th Cir. July 26, 2012) (unpublished) (citing §
19 3582(c)). Mr. Castillo is attempting to invoke the third
20 exception. His request for modification faces two obstacles.

21
22 Section 3582(c) is limited to situations in which the moving
23 party is serving a federal prison sentence; that is to say, some
24 part of his federal prison sentence could be eliminated. Once a
25 person has completed his federal prison sentence, it no longer
26 exists except as a painful memory. He may have to serve some

1 other prison sentence, but he will never have to re-serve the
2 federal prison sentence he has completed. Since the now-
3 completed sentence has been fully served, it cannot be modified.
4 Nothing remains. Any injury the person has suffered cannot be
5 redressed by § 3582(c) because § 3582(c) offers relief only to
6 that prisoner who is in the process of serving a federal prison
7 sentence. This is the first of the two obstacles Mr. Castillo
8 faces. On July 14, 2005, he was sentenced to a term of 46 months
9 imprisonment in the instant case, *i.e.*, CR-04-2157-FVS. His 46-
10 month sentence ran concurrently with a 240-month sentence that
11 had been imposed previously in CR-04-2049-WFN. Almost 96 months
12 have elapsed since Mr. Castillo began serving his sentence in the
13 instant case. It seems likely he completed his 46-month sentence
14 long ago. Thus, there is no longer a prison sentence in the
15 instant case for the Court to modify.
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17 There is a second obstacle. Let us assume, for purposes of
18 argument, some portion of Mr. Castillo's 46-month sentence
19 remains to be served. He still must satisfy the requirements of
20 § 3582(c)(2). In order to do so, he must demonstrate he "has
21 been sentenced to a term of imprisonment based on a sentencing
22 range that has subsequently been lowered by the Sentencing
23 Commission pursuant to 28 U.S.C. § 994(o)." To date, he has
24 failed to satisfy this requirement. He has not identified an
25 amendment to the Sentencing Guidelines that both applies to his
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1 case and has taken effect since he was sentenced. Thus, he is
2 not eligible for relief under § 3582(c).

3 **IT IS HEREBY ORDERED:**

4 1. The defendant's "Motion to Depart Downward" (**ECF No. 72**)
5 is **denied**.

6 2. The United States need not respond to the defendant's
7 "Administrative Notice and Demand for Identification and
8 Credentials" (ECF No. 73).

9 3. The United States need not respond to the defendant's
10 interrogatories (ECF No. 74).

11 **IT IS SO ORDERED.** The District Court Executive is hereby
12 directed to enter this order and furnish copies to the defendant
13 and to counsel for the United States.

14 **DATED** this 7th day of June, 2013.

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17 s/Fred Van Sickle
18 Fred Van Sickle
19 Senior United States District Judge
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